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**NOT TO BE PUBLISHED IN THE OFFICIAL REPORTS**



IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA

SECOND APPELLATE DISTRICT

DIVISION TWO

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| KENNETH MATTOX,<br><br>Plaintiff and Respondent,<br><br>v.<br><br>KIRIACOU ANTOUN,<br><br>Defendant and Appellant. | B192084<br><br>(Los Angeles County<br>Super. Ct. No. NC032294) |

APPEAL from a judgment of the Superior Court of Los Angeles County. Judith A. Vander Lans, Judge. Affirmed.

Law Offices of Thomas Edward Wall, Thomas Edward Wall for Defendant and Appellant.

The Law Offices of James A. Rainboldt, James A. Rainboldt, Francis X. Flynn for Plaintiff and Respondent.

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The trial court denied a motion to vacate a judgment entered against defendant after he failed to appear for trial. Defendant contends that the court lacked jurisdiction to enter judgment because no proper notice of the trial date was given to him pursuant to Code of Civil Procedure section 594.[1] We affirm because (1) the motion to vacate was untimely and (2) the trial court did not abuse its discretion in denying the motion on the merits.

## FACTS

Respondent Kenneth Mattox was attacked and beaten by a security guard at a convenience store in 2001. He brought a personal injury action against (among others) the security guard's employer, Jaguar Security Service, Inc., and appellant Kiriacou Anton, who is an officer and principal owner of Jaguar Security. Appellant answered and denied the allegations in the complaint.

Appellant's attorney withdrew from representation in August 2004. In connection with his withdrawal, the attorney declared that appellant's son and codefendant, Nader Antoun (who attended the hearing on the motion to withdraw), asked that information regarding the case be sent to Jaguar Security's business address in Culver City, and asserted that appellant would receive it there. On August 10, 2004, the trial court granted the attorney's motion to be relieved; its order listed a trial date of September 27, 2004. A copy of the court order was served on appellant at his Culver City business on August 12, 2004.

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[1] The statute reads, "In superior courts either party may bring an issue to trial or to a hearing, and, in the absence of the adverse party, unless the court, for good cause, otherwise directs, may proceed with the case and take a dismissal of the action, or a verdict, or judgment, as the case may require; provided, however, if the issue to be tried is an issue of fact, proof shall first be made to the satisfaction of the court that the adverse party has had 15 days' notice of such trial . . . ." (Code Civ. Proc., § 594, subd. (a).) All further statutory references in this opinion are to the Code of Civil Procedure.

Appellant and his codefendants failed to appear when the matter was called for trial on September 27, 2004. Their absence prompted the court to inquire whether the defendants received notice of the trial date. After some discussion, the court determined that its August 10 order relieving counsel specified the trial date, and was served on appellant and his codefendants at their business address in Culver City. The trial then commenced. After hearing an opening statement and plaintiff's testimony, the court continued the hearing until September 29. Plaintiff's counsel agreed to give notice of the continuance to appellant and his codefendants. On January 13, 2005, judgment was entered against appellant and his codefendants in the principal amount of $834,000.

On August 16, 2005, seven months after judgment was rendered, appellant and his son moved to vacate the judgment. They argued that they "were unaware that they were required to attend" the trial on September 27, 2004, when appellant had an eye appointment: "as a result of the doctor's appointment, defendants failed to appear at the trial date of September 27, 2004." The Antouns requested relief on the grounds of mistake, inadvertence, surprise or excusable neglect. The court denied the motion.

In May 2006, appellant made a second motion to vacate the judgment, this time on the grounds that "proper notice of the trial was not given to this individual defendant thereby depriving this court of jurisdiction to enter a judgment against him . . . ." Appellant declared, "Notice of trial in this action was never delivered to my residence" and "I only found out the trial was set for September 27, 2004 because my son, Nader Antoun told me."

The court denied the motion to vacate. This timely appeal ensued.

## DISCUSSION

The trial court's denial of a motion to vacate the judgment for lack of jurisdiction is appealable as a special order made after judgment. (*Socol v. King* (1949) 34 Cal.2d 292, 297; *Residents for Adequate Water v. Redwood Valley County Water Dist.* (1995) 34 Cal.App.4th 1801, 1805.) When the trial court is asked to vacate a default judgment, it may have to resolve factual conflicts created by the parties' affidavits. In such a case, the trial court determines "the credibility of affiants and the weight of their averments, and its

determination is rarely disturbed on appeal." (*Hammel v. Lindner* (1964) 224 Cal.App.2d 426, 431-432; *Beckett v. Kaynar Mfg. Co., Inc.* (1958) 49 Cal.2d 695, 699; *Greenwell v. Caro* (1952) 114 Cal.App.2d 35, 38.) The trial court's denial of a request to vacate a default judgment will not be overturned absent an abuse of discretion. (*Monsan Homes, Inc. v. Pogrebneak* (1989) 210 Cal.App.3d 826, 829.)

*a. Appellant's Motion To Vacate Was Untimely*

The first problem we detect is with the timing of appellant's motion. "'The general rule is that once a judgment has been entered, the trial court loses its unrestricted power to change that judgment.'" (*Rochin v. Pat Johnson Manufacturing Co.* (1998) 67 Cal.App.4th 1228, 1237.) Various statutes authorize the courts to amend or vacate a judgment. (*Ibid.*) In addition, "a court has inherent power, apart from statute, to correct its records by vacating a judgment which is void on its face, for such a judgment is a nullity and may be ignored." (*Olivera v. Grace* (1942) 19 Cal.2d 570, 574; *Rochin v. Pat Johnson Manufacturing Co., supra*, 67 Cal.App.4th at p. 1239.)

A judgment that is "void on its face" may be set aside at any time after its entry *if* its invalidity may be determined from an inspection of the judgment roll. (*Plaza Hollister Ltd. Partnership v. County of San Benito* (1999) 72 Cal.App.4th 1, 19.) The "judgment roll" is limited to certain documents. (§ 670.)[2] Notably, for our purposes, the judgment roll does not include a notice of trial.

If the invalidity of the judgment does not appear on its face, i.e., from an inspection of the judgment roll, a court has no power to set aside a judgment unless a timely motion is made under section 473 within six months after entry of judgment. (*Thompson v. Cook* (1942) 20 Cal.2d 564, 569; *Plaza Hollister Ltd. Partnership v.*

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[2] When an answer has been filed in a case, the judgment roll consists of the pleadings; all orders striking the pleadings; the jury verdict; the statement of decision; any order made on demurrer; and the judgment. If there are two or more defendants, and any one of them has allowed a judgment to pass by default, the judgment roll includes the summons, with proof of service on the defendant. (§ 670, subd. (b).)

*County of San Benito, supra*, 72 Cal.App.4th at p. 19.) The six-month limitations period applies to motions under section 473, subdivision (d) seeking to vacate a void judgment. (*Plaza Hollister Ltd. Partnership v. County of San Benito, supra*, 72 Cal.App.4th at p. 19, fn. 11.)

In this case, the invalidity of the judgment cannot be determined merely by scrutinizing the judgment roll. The judgment appears valid on its face. Questioning the validity of this judgment requires additional evidence, particularly affidavits from the parties regarding the events leading up to the trial, and their knowledge of the trial date. In this situation, a timely motion must be made under section 473, within six months after entry of judgment. Judgment was entered on January 13, 2005. Appellant's request to vacate the judgment on the grounds of improper notice was filed in May 2006, 16 months after the entry of judgment. The trial court could properly have denied appellant's request for relief on the grounds of untimeliness.

*b. Appellant Received Notice Of The Trial Date*

Even if appellant had made a timely request for relief from the default judgment, his contentions would still fail because the trial court reasonably concluded that appellant had notice of the trial date.

Section 594 prohibits trial of an issue of fact in the absence of the defendant unless the defendant has had 15 days' notice of the trial. Fifteen days is the minimum amount of time deemed necessary by the Legislature to enable the parties to make final preparations for trial, and "the court lacks authority to proceed with trial in the absence of a party who has not received this minimum period for preparation." (*Au-Yang v. Barton* (1999) 21 Cal.4th 958, 962 (*Au-Yang*).) If a party fails to appear for trial, trial may proceed "only if 'proof shall first be made to the satisfaction of the court that the [absent] party has had 15 days' notice of such trial . . . .'" (*Id*. at pp. 962-963.) The purpose of this requirement "'is to prevent the possibility of . . . default being taken against one who has, by reason of insufficient notice or no notice of the time of trial, been unable to appear'" because "[p]roceeding to judgment in the absence of a party is an extraordinary and disfavored practice . . . ." (*Id*. at p. 963.)

Compliance with the 15-day notice requirement is "'mandatory.'" (*Au-Yang, supra,* 21 Cal.4th at p. 963.) The burden is on the party seeking to proceed to trial in the absence of the opposing party to prove that the absent party received at least 15 days' notice. (*Ibid*.) Proof may be made by producing an affidavit or certificate pursuant to section 1013a. (§ 594, subd. (b).)

On the trial date in this case, after appellant failed to appear, the trial court asked for proof that appellant had notice of the trial. The court's attention was directed to a notice that was sent out when defense counsel withdrew from the case. The document was an order signed by the court on August 10, 2004, which granted counsel's motion to be relieved. The order stated, "The trial in this action or proceeding . . . is set for September 27, 2004 at 8:30 a.m. in Dept. 85 of the San Pedro Court, 505 S. Centre Street, San Pedro, CA 90731." A copy of the court's order was served on appellant at his business address in Culver City on August 12, 2004. At trial, the court observed that its August 10 order gave the correct trial date and location of the trial.

There was sufficient evidence to satisfy the trial court that the section 594 mandatory notice requirement was met. The certificate of mailing dated August 12 provided appellant with the signed court order informing appellant of the September 27 trial date. Service by mail "may be made where the person on whom it is to be made resides or has his office at a place where there is a delivery service by mail . . . ." (§ 1012.) As a result, appellant received notice of the trial 46 days in advance, more than enough time to make final trial preparations.

The declarations submitted by appellant in support of his two motions to vacate the judgment are revealing. In his August 2005 motion to vacate, appellant argued that he missed the trial because he had a doctor's appointment and did not realize that he was required to attend the trial. The inference is that appellant had actual notice of the trial date, but chose to attend his eye appointment instead of the legal proceedings. In his second motion to vacate in May 2006, appellant declared that the notice of trial "was never delivered to my residence" and that he found out about the trial date because his son told him about it. Mail delivery to a business address constitutes valid service.

(§ 1012.) In his declaration, appellant did not deny that the August 12 notice was sent to him at his office in Culver City, nor did he deny actual notice of the trial date.[3]

Appellant complains he had no advance notice that the trial--after commencing on September 27, 2004--would thereafter be continued for two days for the convenience of the expert witnesses. A continuance granted after the parties have notice of the original trial date does not violate section 594. "When a trial, previously set for one date, is continued to a later date, the absent party's opportunities to plan and prepare for trial and to be present at trial are unlikely to be harmed, for it will have completed its preparations by the previously scheduled date. This is true even if the party is unaware of the continuance, for in that case it will have completed its preparations by the original trial date and simply by appearing at that time it will learn of the new time for trial." (*Au-Yang, supra*, 21 Cal.4th at p. 965. See also *City & County of San Francisco v. Carraro* (1963) 220 Cal.App.2d 509, 518 [once notice of the initial trial date is given, "it is the duty of all parties to keep themselves informed by diligent inquiry of all subsequent continuances"].) In any event, upon receiving the notice of continuance appellant did not hurry to court to object that he received inadequate notice of trial. Instead, he waited over a year and a half to request relief, which is consistent with the indifference he has displayed over the course of these proceedings.

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[3] Appellant makes a lengthy argument that the doctrine of alter ego entitled him to notice as an individual. The notice of August 12, 2004, was sent to appellant individually, another one was sent to Jaguar Security, and a third notice was sent to codefendant Nader Antoun.

## DISPOSITION

The judgment is affirmed.

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BOREN, P.J.

We concur:

DOI TODD, J.

ASHMANN-GERST, J.